

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 23 2011

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

HECTOR VARGAS CORONA,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 08-71659

Agency No. A077-819-859

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted March 8, 2011**

Before: FARRIS, LEAVY, and BYBEE, Circuit Judges.

Hector Vargas-Corona, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order denying his motion to reopen based on ineffective assistance of counsel. We have jurisdiction under 8 U.S.C.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

§ 1252. We review de novo claims of ineffective assistance of counsel, for substantial evidence findings of fact regarding counsel's performance, and for abuse of discretion the denial of a motion to reopen. *Lin v. Ashcroft*, 377 F.3d 1014, 1023-24 (9th Cir. 2004). We deny the petition for review.

The BIA did not abuse its discretion in denying Vargas Corona's motion on the ground that Vargas Corona did not establish ineffective assistance by his former attorneys where the record does not compel the conclusion that Vargas Corona's former attorneys were aware his mother would pass away during the course of his removal proceedings. *See Lin*, 377 F.3d at 1023 (petitioner must establish that counsel's performance prevented him from reasonably presenting his case).

PETITION FOR REVIEW DENIED.